

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROSA ESTELA OLVERA JIMENEZ,

Petitioner,

v.

LORIE DAVIS,

Respondent.

CIVIL ACTION NO. 1:12-CV-00373-LY

**Petitioner's Objections to Report and Recommendation
of United States Magistrate Judge**

Petitioner Rosa Estela Olivera Jimenez makes the following objections to the proposed findings and recommendations contained in the Report and Recommendation of United States Magistrate Judge filed September 10, 2018 (Doc. 39). Magistrate Judge Austin recommended granting Ms. Jimenez's petition on certain grounds and declined to address the merits of three additional claims raised in her petition. Because Ms. Jimenez was granted all the relief she requested, and there were no findings or recommendations on those claims to which Ms. Jimenez was required to object under Rule 72, these objections are likely unnecessary. *See Corcoran v. Levenhaven*, 558 U.S. 1 (2009). However, in the abundance of caution, Ms. Jimenez makes the following objection:

In the Report and Recommendation, U.S. Magistrate Judge Andrew W. Austin recommended that Ms. Jimenez's Amended Application for Writ of Habeas Corpus (Doc. 27) be granted and the Court order the State to give Ms. Jimenez a new trial within 120 days of the final judgment in this case or release her from custody. (Doc. 39 at 49.) In making this recommendation, Judge Austin found that Ms. Jimenez was entitled to relief on her *Ake v. Oklahoma* claim (Doc. 39 at 41-47) and her claim that she was denied

effective assistance of counsel because her counsel failed to retain a qualified and appropriate expert and preserve her *Ake* claim (Doc. 39 at 23-41). Judge Austin declined to consider the merits of Ms. Jimenez's other claims for relief, including her claims that she:

1. Is actually innocent of the crimes of conviction (Doc. 27 at 83);
2. Was denied the effective assistance of counsel because counsel failed (a) to object to the introduction of the probable cause and search warrant affidavits; (b) to object to the State's experts' testimony; (c) to mitigate the harm of Dr. Kanfer's meltdown; and (d) to object to the prosecution's statement in closing argument about the odontologist and alleged bite-marks on her hands (Doc. 27 at 65-81); and
3. Was denied her right to due process of law by the cumulative effect of her counsel's failures (Doc. 27 at 81-82).

(Doc. 39 at 18.)

Ms. Jimenez objects to the report and recommendation's failure to grant relief under the additional grounds referenced above for the reasons and based on the facts and law set forth in the pages of her Amended Application referenced above which are incorporated herein as though set forth in full. Ms. Jimenez respectfully submits that she is also entitled to relief on these additional claims.

Date: October 8, 2018

Respectfully submitted,

/s/ Bryce Benjet

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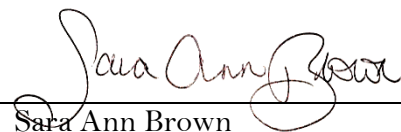
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CERTIFICATE OF SERVICE

I hereby certify that on the October 8, 2018, a copy of the foregoing was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on all parties registered to receive such service, including the following:

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Sara Ann Brown
